

CHAPTER 148. HEARINGS CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

§148.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Act -- The Texas Workers' Compensation Act, Texas Labor Code, §§401.001 et. seq.
- (2) Administrative Law Judge or ALJ -- The administrative law judge (ALJ) designated by the State Office of Administrative Hearings (SOAH) to preside over the hearing.
- (3) APA -- The Administrative Procedure Act, as specified in the Government Code, Chapter 2001.
- (4) Commission -- The Texas Workers' Compensation Commission.
- (5) Commission Representative -- The attorney or representative that may be designated by the executive director of the commission to represent the commission.
- (6) Contested Case -- A proceeding held by the State Office of Administrative Hearings in which the legal rights, duties, or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing as defined in the Texas Government Code, §2001.003, subject, however, to the provisions of the Act as codified in the Texas Labor Code, Title 5, Subtitle A, including §§401.021(1), 411.049, 413.031, 413.055, 415.034, 402.073, 407.046, and 408.0231, 408.023, 408.024 and the rules adopted by the commission, in particular this chapter.
- (7) IRO -- An Independent Review Organization, established in accordance with Insurance Code article 21.58C, performing reviews of health care under the Act.
- (8) Party -- A person or state agency named or admitted as a party.
- (9) Person -- An individual, partnership, corporation, association, governmental subdivision, or public or private organization that is not a state agency as defined in the APA.
- (10) Petitioner -- The person who has filed a written request for a hearing in accordance with these procedures.
- (11) Respondent -- The person responding to the petitioner's request for a hearing.
- (12) SOAH -- The State Office of Administrative Hearings.
- (13) TWCC Chief Clerk -- The Chief Clerk of Proceedings within the Hearings Division in the central office of the commission.

The provisions of this §148.1 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.2. Scope and Applicability.

- (a) Scope of these rules. Except for benefit disputes, governed by chapters 140, 142, and 143 of this title (relating to Dispute Resolution-General Provisions; Dispute Resolution-Benefit Contested Case Hearing; and Dispute Resolution-Review by the Appeals Panel), these rules govern all contested case hearings to adjudicate disputes before the SOAH arising under the Act.

- (b) Coordination with SOAH’s Procedural Rules. The procedural rules of the commission govern the following procedural matters and also provide related policies of the commission:
 - (1) matters arising before a case is transferred by the commission to SOAH;
 - (2) matters arising after a proposal for decision or after the entire case is received from SOAH;
 - (3) requests for the issuance of a subpoena and related matters; and
 - (4) requests for issuance of a commission requiring deposition and related matters.
- (c) Applicability of the Administrative Procedure Act. The sections of the APA enumerated in the Texas Labor Code, §401.021(1), apply to the hearings governed by this chapter. In hearings involving those sanctions defined by the Act, §§402.072, 407.046, 408.0231, and in other cases not subject to §402.073(b), the commissioners render the final decision and the provisions of the APA, §2001.062 will be followed.

The provisions of this §148.2 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.3. Requesting a Hearing.

- (a) When requests are due. The person requesting a hearing shall file a written request addressed to the TWCC Chief Clerk, in accordance with the instructions provided in the TWCC notice letter regarding submission of an appeal, not later than 20 days after:
 - (1) receipt of a findings and decision from the medical review division on a review of a medical service or a medical fee under the Act, §413.031(a), (b), (c), (f), and (k), or;
 - (2) receipt of an IRO decision under the Act, §413.031, except with respect to a prospective necessity dispute regarding spinal surgery in which case the request shall be filed in accordance with §133.308 of this Title (relating to Medical Dispute Resolution by Independent Review Organization), or;
 - (3) receipt of a commission refund order issued pursuant to a commission audit or review;
 - (4) issuance of an interlocutory order for payment under the Act, §413.055, or;
 - (5) receipt of a notice of administrative violation under the Act, §415.032; or
 - (6) receipt of a notice of identification as a hazardous employer under the Act, §411.042; or
 - (7) receipt of a notice of sanction under the Act, §408.0231; or
 - (8) receipt of a notice of the intent of the commission to determine the legal rights, duties, or privileges of a party within the scope of §148.2 of this Title (relating to Scope and Applicability).
- (b) Date deemed filed or received. When a request for a hearing is addressed to the TWCC Chief Clerk but is sent to an office other than the TWCC Chief Clerk, the date filed or received shall be the date the request is received in the central office. When a request for a hearing is not addressed to the TWCC Chief Clerk, it will not be considered as received by the Commission unless it is actually received by the TWCC Chief Clerk. Otherwise, a request for a hearing is deemed filed as of the date of the TWCC date stamp placed on the document or other evidence of receipt.
- (c) Requests under §413.031 of the Act. If the request for a hearing is based on a receipt of a findings and decision from the medical review division on a review of a medical service or a medical fee under the Act, §413.031, or receipt of an IRO decision under the Act, §413.031, (except with respect to a prospective necessity dispute regarding spinal surgery in which case the request shall be filed in accordance with

§133.308 of this Title (relating to Medical Dispute Resolution by Independent Review Organization and except with respect to disputes handled in accordance with §133.309 of this Title (relating to Alternate Medical Necessity Dispute Resolution by Case Review Doctor)), to be deemed a request for hearing the request shall:

- (1) contain a statement indicating that it is a request for a hearing;
- (2) include a copy of the findings and decision on which a hearing is being requested; and
- (3) be signed by a requestor or respondent as defined by §133.305 of this Title (relating to Medical Dispute Resolution - General), or its representative.
- (4) include a certificate of service demonstrating that the request has been sent to the other party in accordance with the requirements of §133.307 of this Title (relating to Medical Dispute Resolution of a Medical Fee Dispute), or §133.308 of this Title (relating to Medical Dispute Resolution by Independent Review Organization) in substance as follows:

“I hereby certify that I have on this ____ day of _____, 20 __, served a copy of the attached instrument on (state the name of the other parties on whom a copy was served) by (state the manner of service.)”

- (d) Late filings. A written request for hearing filed with the TWCC Chief Clerk later than 20 days after the starting date specified in subsection (a) of a matter set forth in subsection (a) of this section shall be dismissed.
- (e) Request for correction of clerical error. If the request for hearing is a request to correct a clerical error, the executive director, or the director’s designee, may at any time prior to delivery of the request for a hearing to SOAH, revise the order or decision to correct the clerical error.
 - (1) When a party requests a correction of clerical error and intends that request to constitute a request for hearing pursuant to this section, the request shall:
 - (A) meet all of the requirements of subsection (c) (1) – (4) of this section;
 - (B) include markings on a copy of the findings and decision indicating the alleged error;
 - (C) state the requested correction, and the reasons for making it.
 - (2) A party affected by the proposed correction to the order or decision may file a response to the request with the TWCC Chief Clerk no later than 10 days after receipt of a party’s request for correction of clerical error.
 - (3) After notice and opportunity to respond under paragraph (2) of this subsection, the commission shall either:
 - (A) issue and deliver to the parties a corrected order or decision; or
 - (B) deliver the request for hearing to SOAH.
- (f) Correction of clerical error discovered by commission. Upon receipt of a request for hearing, the executive director, or the director’s designee, may at any time prior to delivery of the request for a hearing to SOAH, advise the parties in writing by verifiable means of the commission’s intent to revise the order or decision to correct the clerical error.

- (1) Any party affected by the proposed correction to the order or decision may file a response to the notice with the TWCC Chief Clerk no later than 10 days after receipt of the notice of the commission's intent to revise the order or decision.
- (2) Following notice of the commission's intent to revise the order or decision, and after notice and opportunity to respond under paragraph (1) of this subsection, the commission shall either:
 - (A) issue and send to the parties a corrected order or decision; or
 - (B) send the request for hearing to SOAH.
- (g) Delivery of request. The commission shall send the request for a hearing to SOAH within twenty working days of receipt, if the decision has not been withdrawn under the provisions contained in §148.8 of this Title (relating to Withdrawal of Hearing Request), unless the parties have been notified of the commission's intent to revise the order or decision pursuant to subsections (e) or (f) of this section.
- (h) Notice of alleged violation. If the notice is a notice of alleged violation, the person charged shall file an answer not later than the 20th day after the date of receipt of the notice. The answer must either consent to the proposed sanction, and remit the amount of the penalty, if any, or request a hearing.
- (i) Commission request for hearing. Notwithstanding the provisions of subsection (a) of this section, the commission may request a hearing as permitted by the Act and the implementing rules to the Act, including, but not limited to the Act, §407.046(b) and §411.0415(c).

The provisions of this §148.3 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.4. Correction of Clerical Error in Medical Review Division Decisions or Orders Absent a Request For Hearing.

- (a) Correction of clerical error at request of party. Notwithstanding the provisions of §148.3 of this Title (relating to Requesting a Hearing), the executive director or the director's designee may at any time revise an order or decision of the medical review division to correct clerical error:
 - (1) at the request of a party or parties affected by the order or decision; or
 - (2) on the executive director or the director's designee's decision.
- (b) Contents of request. When a party requests correction of clerical error, the request shall:
 - (1) include a copy of the order or decision marked to indicate the alleged error;
 - (2) state the requested correction, and the reasons for making it;
 - (3) be filed with the medical review division; and
 - (4) include a certificate of service demonstrating that the request has been sent to all other parties affected by the order or decision in substance as follows:

"I hereby certify that I have on this ___ day of _____, 20__ served a copy of the attached instrument on (state the name of the other parties on whom a copy was served) by (state the manner of service.)"
- (c) Time to file response. A party affected by the proposed correction to the order or decision may file a response to the request no later than 10 days after receipt of the request.

- (d) Notice of action. No later than 30 days after the request was filed under subsection (b) of this section, the medical review division shall either:
- (1) issue and deliver to the parties a corrected order or decision;
 - (2) advise the parties in writing that the order or decision was correct as originally entered; or
 - (3) advise the parties in writing that the order or decision cannot be corrected pursuant to this section.
- (e) Correction of clerical error on the determination of the executive director or the executive director's designee. When a clerical error is corrected on the determination of the executive director or the executive director's designee, a copy of the corrected order or decision will be delivered to all affected parties. A clerical error may be corrected on the determination of the executive director or the executive director's designee without prior notice to the parties.
- (f) Notice of intent to revise decision or order at discretion of executive director or director's designee. Notwithstanding the provisions of subsection (e) of this section, when the executive director or the director's designee intends to correct a clerical error, at the discretion of the executive director or the director's designee, a notice may be sent advising the parties in writing by verifiable means of the intent to revise the order or decision to correct the clerical error.
- (1) Any party affected by the order or decision may file a response to the notice with the medical review division no later than 10 days after receipt of the notice of the commission's intent to revise the order or decision.
 - (2) No later than 30 days after notice of the commission's intent to revise the order or decision, and after notice and opportunity to respond under paragraph (1) of this subsection, the commission shall either:
 - (A) issue and deliver to the parties a corrected order or decision;
 - (B) advise the parties in writing that the order or decision was correct as originally entered; or
 - (C) advise the parties in writing that the order or decision cannot be corrected pursuant to this section.
- (g) Request for correction of clerical error versus request for hearing. A request to correct clerical error shall not be deemed a request for hearing unless it complies with the requirements specified in §148.3(e) of this Title (relating to Requesting a Hearing).

The provisions of this §148.4 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.5. Notice of Hearing.

- (a) Notice of hearing. Except as provided in subsection (b) of this section, and upon receipt of the docket number, location and setting date from SOAH, and no later than ten days before the hearings date, the TWCC Chief Clerk shall notify the parties in writing, by a verifiable means, of the date, time, place and nature of the hearing; the docket number; the legal authority and jurisdiction under which the hearing will be held; a reference to the particular sections of the statutes and any rules involved; a notice regarding failure to appear and default judgments, and a short, plain statement of the matters asserted. The reference to the statutes and any rules involved, nature of the hearing, and the short, plain statement may be provided by the commission's representative, and, if so, would not be provided by the TWCC Chief Clerk.
- (b) Notice of hearing under the Act, §407.046(b). No later than 30 days before the hearing date, SOAH shall notify, in writing, a certified self-insurer and the TWCC Chief Clerk of the date, time, place, and nature of a hearing concerning the intent of the commission to revoke a certificate of self-insurance under the Act,

§407.046. The notice shall contain a reference to the particular sections of the statute and any rules involved; and a short, plain statement of the matters asserted, including the grounds for the proposed revocation action. The reference to the statutes and rules involved, nature of the hearing, and the short, plain statement may be matters asserted, including the grounds for the proposed revocation action. The reference to the statutes and rules involved, nature of the hearing, and the short, plain statement may be provided by the commission's representative, and, if so, would not be provided by the TWCC Chief Clerk.

The provisions of this §148.5 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.6. Venue.

Hearings are held in Austin, Travis County, Texas.

The provisions of this §148.6 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.7. Representation.

- (a) Representation of injured employees or insurance carriers. Pursuant to §402.071 of the Act (relating to Representatives) and §150.3 of this title (relating to Representatives: Written Authorization Required), a person representing an injured employee or insurance carrier in a contested case hearing shall not receive a fee for providing representation under this subtitle unless the person is an adjuster representing an insurance carrier or licensed to practice law.
- (b) Fee defined. For the purposes of this section, "fee" means any remuneration received directly or indirectly, in cash or in kind. It includes voluntary contributions. The provision of representation before SOAH as an extension of, or in addition to, other services for which a fee was paid shall be considered receipt of a fee for providing representation as specified in §401.011(37) and §402.071 of the Act and section §150.3 of this title (relating to Representatives: Written Authorization Required).
- (c) Representation by employee. The prohibitions in subsections (a) and (b) of this section do not preclude representation by a person who receives a salary as an employee of the person represented to perform services in the usual course and scope of the employer's business.
 - (1) For the purposes of this subsection, "employee" means a person in the service of another under a contract of hire, whether express or implied, or oral or written.
 - (2) The term "employee" does not include:
 - (A) an independent contractor or the employee of an independent contractor; or
 - (B) a person whose employment is not in the usual course and scope of the employer's business.
- (d) Ombudsman Program. This section does not apply to persons performing duties pursuant to the Act, Chapter 409, Subchapter C.
- (e) Administrative violation. A person commits an administrative violation if that person receives a fee for providing representation under circumstances prohibited by this section. A violation of this section shall be deemed a violation of a commission rule.

The provisions of this §148.7 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.8. Withdrawal of Hearing Request.

- (a) The petitioner may, at any time before the decision and order is signed, submit a written request to withdraw the request for a hearing. If the written request is made before the case is received by SOAH or

after a proposal for decision is received from SOAH, the request should be sent to the TWCC Chief Clerk. Otherwise, the request should be submitted to SOAH in accordance with its procedural rules in Title 1 Chapter 155 (relating to Rules Of Procedures).

- (b) Notwithstanding the provisions of subsection (a) of this section, a findings and decision of the commission's medical review division in a review of a medical service or medical fee under the Act, §413.031, or receipt of an IRO decision from the medical review division on a review of a medical service or a medical fee under the Act, §413.031, except with respect to a prospective necessity dispute regarding spinal surgery in which case the withdrawal of request shall be filed in accordance with §133.308 of this Title (relating to Medical Dispute Resolution by Independent Review Organization), may be withdrawn by the commission within fifteen working days after the commission receives the request for hearing before SOAH if the request has not yet been delivered to SOAH.

The provisions of this §148.8 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.9. Informal Disposition.

At any time prior to the signing of the decision by the ALJ or the commission, informal disposition of any case may be made by a written stipulation, an agreed settlement or consent order, or default.

The provisions of this §148.9 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.10. Hearings Subpoenas to Compel Attendance and Subpoenas Duces Tecum.

- (a) Issuance of subpoena. A request for issuance of a subpoena shall be directed to the TWCC Chief Clerk in the commission's central office. On the written request of any party in compliance with the requirements set forth below, and a showing of good cause, the commission shall issue a subpoena addressed to the sheriff or any constable to require the attendance of a witness and production of books, records, paper or other objects that may be necessary and proper for the purpose of the proceedings. The determination of good cause under this section shall include consideration of whether the issuance of the subpoena would cause undue burden or expense to the person served.
- (b) Request for subpoena. A request for issuance of a subpoena shall be in writing addressed to the TWCC Chief Clerk, contain a showing of good cause, and shall comply with the following:
 - (1) The request shall include the subpoena sought to be issued prepared for the signature of the TWCC Chief Clerk.
 - (2) The subpoena shall be addressed to a sheriff or constable for service in accordance with the APA, §2001.089. The request shall contain the name and address of the applicable sheriff or constable.
 - (3) The request shall include a good faith, itemized estimate of the amount likely to accrue under §148.20 of this title (relating to Reimbursement, Travel Expenses, and Fees for Witnesses and Deponents) and include a deposit of the same amount as required by Texas Government Code §2001.089(2) (relating to Issuance of Subpoena). The deposit shall be a certified check, money order, or other negotiable instrument satisfactory to the commission.
 - (4) If the subpoena is for the attendance of a witness, the written request and accompanying subpoena shall contain the name, address, and title, if any, of the witness, the date, time and place where the person is to appear and give testimony, the docket number of the SOAH proceeding, and a statement showing date of execution and return of the subpoena to the TWCC Chief Clerk.
 - (5) If the subpoena is for the production of books, records, writings, or other tangible items, the written request and accompanying subpoena sought shall contain a specific, detailed description of the items sought to be produced, the date, time, and place where the person is to appear and give testimony and

produce the requested items, the docket number of the proceeding, and a statement showing date of execution and return of the subpoena duces tecum to the TWCC Chief Clerk.

- (6) A description of the reasonable steps to avoid imposing undue burden or expense on the person served.
- (c) Failure to comply with subpoena. If a person fails to comply with a subpoena, the commission, acting through the attorney general, or the party requesting the subpoena, may bring suit to enforce the subpoena in a district court in Travis County. This remedy is not exclusive. The commission may enforce the subpoena in any manner permitted by the Act, the APA, or the rules of the commission.

The provisions of this §148.10 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.11. Commissions to Compel Attendance for Deposition.

- (a) Issuance of commissions. A request for issuance of a commission requiring deposition shall be directed to the TWCC Chief Clerk in the commission's central office. On the written request of any party in compliance with the requirements set forth below the commission shall issue a commission addressed to the several officers authorized by statute to take depositions in accordance with the APA, §2001.094. On the written request of any party in compliance with the requirements set forth below the TWCC Chief Clerk shall issue a commission to require that the witness appear and produce, at the time the deposition is taken, books, records, papers, or other objects that may be necessary and proper for the purpose of the proceeding.
- (b) Commission not required for party. The issuance of a commission requiring deposition is not required if the witness is a party or is retained by, employed by, or otherwise subject to the control of a party. Service of the notice of oral deposition upon the party or the party's representative shall be sufficient.
- (c) Deposition of a member of an agency, board or commission. The deposition of a member of an agency, board or commission shall not be taken after a hearing date has been set.
- (d) Requests for commissions requiring deposition. A request for a commission requiring deposition shall be in writing addressed to the TWCC Chief Clerk and shall comply with the following:
 - (1) The request shall include the commission requiring deposition sought to be issued prepared for the signature of the TWCC Chief Clerk.
 - (2) The commission requiring deposition shall be addressed to an officer authorized by statute to take a deposition in accordance with the APA, §2001.094. The request shall contain the name and address of the applicable officer authorized to take the deposition, the date, time and place where either the witness is to appear and give testimony or where the written deposition responses are to be sent, a detailed description of any items the witness will be required to produce, and a statement showing date of execution and return of the commission requiring deposition to the TWCC Chief Clerk.
 - (3) The request shall include a good faith itemized estimate of the amount likely to accrue under §148.20 of this title (relating to Reimbursement, Travel Expenses, and Fees for Witnesses and Deponents) and include a deposit of the same amount as required by Texas Government Code §2001.094(a) (related to Issuance of Commission Requiring Deposition). The deposit shall be certified check, money order, or other negotiable instrument satisfactory to the commission.
 - (4) The party seeking the commission requiring deposition should coordinate with the other party or parties and with the witness to determine a mutually agreeable location and time for the attendance of the witness. The request for commission requiring deposition shall state whether such coordination has been made and whether the proposed location and time is by mutual agreement with the parties and witness.

- (5) The party seeking the commission requiring deposition which includes a requirement for production should coordinate with the other party or parties, and with the person from whom production is sought, to determine a mutually agreeable location and time for the requested production. The request for the commission requiring deposition shall state whether such coordination has been made and whether the proposed location and time is by mutual agreement with the parties and the person from whom production is sought.
- (e) Application of the APA. Matters related to deposition conduct, use, opening, and any other matters relating to depositions not covered by these rules shall be in accordance with the requirements of the APA, Chapter 2001.
- (f) Failure to comply with commission requiring deposition. If a person fails to comply with a commission requiring deposition, the commission, acting through the attorney general, or the party requesting the subpoena or commission, may bring suit to enforce the subpoena or commission in a district court in Travis County. This remedy is not exclusive. The commission may enforce the subpoena or commission requiring deposition in any manner permitted by the Act, the APA, or the rules of the commission.

The provisions of this §148.11 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.12. Ex Parte Communications.

The APA, §2001.061 applies to commissioners and employees of the commission and to the ALJs of SOAH. It provides that:

- (1) unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate; and
- (2) under the APA, §2001.090, a member of an agency or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case, including SOAH, may communicate ex parte with employees of the commission, who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the commission and its staff in evaluating the evidence.

The provisions of this §148.12 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.13. Recording the Hearing.

- (a) Arrangement for court reporter and costs. In cases in which a court reporter is required, on the commission's own initiative or at the request of a party or when required by SOAH rules or the ALJ of a case, the commission will arrange for a court reporter. The Petitioner is responsible for all associated costs including the costs of the court reporter at the hearing and the costs associated with preparation of a verbatim record if one is required. In cases in which more than one party is seeking affirmative relief, the costs will be assessed equally. Nothing in this section precludes the parties from entering into their own agreement regarding arrangements for a court reporter or allocation of associated costs.
- (b) Recording by a party. A party electing to use a means of making a record that is in addition to the means specified in SOAH's rules or by the ALJ is responsible for all associated costs. If a verbatim record is made, the party shall provide the commission and SOAH with a copy of the audiotape or videotape free of charge. If a transcript is made, the party shall provide the commission with the original of the transcript free of charge.

The provisions of this §148.13 adopted to be effective June 9, 2005 30 TexReg 3237.

§ 148.14. Burden of Proof.

- (a) Burden of proof. The Commission has the burden of proof in hearings pursuant to the Act §§402.072, 408.0231, 411.0415, 411.049, 415.021, 415.023, 415.032 and 415.034, (except issues under §§120.2(g) and (h) of this title (relating to Employer's First Report of Injury). The burden of proof rests with the party seeking relief in hearings conducted pursuant to the Act, §§408.024, 413.031, and 413.055. The burden of proof rests with the certified self-insurer in hearings conducted pursuant to the Act, §407.046 and §407.133. The burden of proof rests with the party(ies) requesting the hearing challenging the position of the staff of the Self-Insurance Division in hearings conducted pursuant to the Act, §407.066. The burden of proof of showing timely filing or good cause when an allegation of untimely filing has been made rests with the employer in issues under §120.2 of this title (relating to Employer's First Report of Injury).
- (b) Proof. Proof required to prevail at a contested case hearing shall be by a preponderance of the evidence, except in cases of appeals pursuant to §133.308 of this title (relating to Medical Dispute Resolution by Independent Review Organization) in which case the decision of the IRO shall be given presumptive weight.

The provisions of this §148.14 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.15. Final Decision by the ALJ.

- (a) Decision. In contested cases held under the Act, §§411.049, 413.031, 413.055, and 415.034, and after all evidence has been heard, the ALJ shall adjourn the hearing.
- (b) Entry of orders. The ALJ shall enter orders that are necessary to implement the decision and when the order requires any action or compliance, it shall contain a period of time, normally not to exceed 30 days from the date the order is received, for such action or compliance to be completed. Receipt of an order will be determined by §102.5 of this title (relating to General Rules for Written Communication to and from the Commission). If it is determined an administrative penalty violation has occurred, the decision shall set forth the amount of the penalty assessed and shall order payment within a period of time not to exceed 30 days from the date that the order is received. Any penalty assessed by the ALJ for an administrative violation shall be in accordance with the Act, §415.021(c).
- (c) Furnishing decision. The decision shall be sent immediately to the parties or their representatives by verifiable means that shall be documented in the hearing file. If the decision is furnished by personal delivery, a receipt verifying personal delivery and containing the date of delivery and the person, any business title, and person's business address that received the delivery shall be made by the person who makes the personal delivery, and shall be date-stamped and placed in the hearing file.
- (d) Finality of decision. The ALJ's decision is final on the date it is received as determined by §102.5 of this title (relating to General Rules for Written Communications to and from the Commission).
- (e) Exhaustion of administrative remedies. The notification to a party of the ALJ's final decision constitutes exhaustion of all administrative remedies. No motion for rehearing pursuant to the APA or otherwise will be entertained.
- (f) Judicial Review. A party dissatisfied with a decision of the ALJ may seek judicial review as provided by the Act and in accordance with the APA, §§2001.171, 2001.172, 2001.174, and 2001.176.

The provisions of this §148.15 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.16. Proposal for Decision by the ALJ.

- (a) Proposal For Decision. In contested cases held under the Act, §§402.072, 407.046, and 408.0231, and in other cases not subject to §402.073(b) of the Act (relating to Cooperation with SOAH), and after all evidence has been heard, the ALJ shall adjourn the hearing.
- (b) Description of Proposal Decision. The proposal for decision shall be based solely upon the record of the individual case. It shall be in writing and include information specified in §149.9 of this Title (relating to Proposals for Decision in accordance with the Act, §§402.072, 407.046, and 408.0231).
- (c) Furnishing decision. SOAH shall furnish the proposal for decision to the TWCC Chief Clerk and shall furnish the proposal for decision by verifiable means and retain information on the date, address, person or entity served, and the means of service to the parties to the hearing. The TWCC Chief Clerk shall notify the Chief of Staff and the General Counsel of the receipt of a proposal for decision from SOAH.
- (d) Filing of briefs and exceptions. Any party may file briefs and exceptions to the proposal for decision, with SOAH and the TWCC Chief Clerk, for consideration by the ALJ and the commission no later than 15 days after receiving the proposal for decision. Any brief and exceptions filed by any party shall be served by that party on all other parties in the manner provided by §§155.23 of Title 1 (relating to Filing Documents or Serving Documents on the Judge) and 155.25 of Title 1 (relating to Serving a Document to Parties) except that an additional copy shall be served upon the TWCC Chief Clerk in accordance with §102.5 of this Title (relating to General Rules for Written Communications to and from the Commission).
- (e) Filing replies. Any party may file a reply to a brief and exceptions filed under subsection (f) of this section, with SOAH and the TWCC Chief Clerk, for consideration by the ALJ and the commission no later than fifteen days after the filing of the brief and exceptions. Any reply filed by any party shall be served by that party on all other parties in the manner provided by §§155.23 of Title 1 (relating to Filing Documents or Serving Documents on the Judge) and 155.25 of Title 1 (relating to Serving a Document to Parties) except that an additional copy shall be served upon the TWCC Chief Clerk in accordance with §102.5 of this Title (relating to General Rules for Written Communications to and from the Commission).
- (f) Decision by the commission. The commission shall consider the case at a posted meeting of the commission, no later than 120 days after SOAH provides the commission with the proposal for decision, or the date of the ALJ's comments or response to any exceptions or briefs and any replies to such exceptions or briefs or the expiration of the ALJ's deadline for such response in accordance with §155.59 of Title 1 (relating to Proposal for Decision). Parties to a contested case will be notified of the final decision of the commissioners by verifiable means.
- (g) Exhaustion of administrative remedies. The notification to a party of the commission's final decision constitutes exhaustion of all administrative remedies. No motion for rehearing will be considered.
- (h) Judicial Review. A party dissatisfied with a decision of the commission may seek judicial review as provided in the Act in accordance with the APA. Judicial review will be in accordance with the Act and the APA §§2001.171, 2001.172, and 2001.174.

The provisions of this §148.16 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.17. Special Provisions for Administrative Penalties.

Required response to assessment of administrative penalty. Not later than the 30th day after a party receives notification of the ALJ's decision assessing an administrative penalty, under §148.15(c) of this title (relating to Final Decisions of the ALJ), the charged party shall file with the TWCC Chief Clerk:

- (1) the full amount of the penalty, in the form of a cashier's check, a certified check, or a certified draft; or
- (2) a bond for the full amount of the penalty. The bond must be:

- (A) executed by a licensed surety company authorized to do business in Texas;
- (B) approved by the commission;
- (C) made payable to the Texas Workers' Compensation Commission; and
- (D) must be effective until all judicial review is final.

The provisions of this §148.17 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.18. Record of the Hearing.

The record of the hearing includes:

- (1) all pleadings, motions, and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings on them;
- (5) proposed findings and exceptions;
- (6) any decision, opinion, report or proposal for decision by the officer presiding at the hearing and any decision by the commission; and
- (7) all staff memoranda or data submitted to or considered by the ALJ or members of the agency who are involved in making the decision.

The provisions of this §148.18 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.19. Transcript or Duplicate of the Hearing Audiotape or Videotape.

- (a) A party may submit a request to the commission for a transcript of the hearing audiotape or videotape. The requestor shall pay the cost of the transcript, as established by the commission.
- (b) A party may submit a request to the commission for a duplicate of the hearing audiotape or videotape. The requestor shall pay the cost of the duplication, as established by the commission.

The provisions of this §148.19 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.20. Reimbursement, Travel Expenses, and Fees for Witnesses and Deponents.

- (a) Reimbursement of witness or deponent. A witness or deponent who is not a party and who is served with a subpoena or otherwise compelled to attend any hearing or proceeding to give a deposition or to produce books, records, papers, or other objects that are necessary for the proceeding is entitled to receive reimbursement for travel, meals, lodging, and other amounts as specified and limited in the APA, §2001.103 (relating to Expenses of Witness or Deponent):
- (b) Reasonable and necessary expenses and service. The party requesting the subpoena or commission or otherwise compelling the attendance of a witness at any hearing or proceeding to give a deposition or produce books, records, papers, or other objects shall be responsible for the payment, of any expense,

incurred in serving the subpoena, as well as reasonable and necessary expenses incurred by a nonparty witness who appears in response to the subpoena.

- (c) Failure to pay expenses. The party requesting the subpoena or commission or otherwise compelling the attendance of a witness at any hearing or proceeding to give a deposition or produce books, records, papers, or other objects shall pay the witness the amount accrued under this section. Failure to pay the witness the amount accrued when sought shall be deemed a violation of a commission rule.
- (d) Return of deposit. After the Commission's Chief Clerk has received, from the party requesting the subpoena or commission to take deposition, sufficient documentation of all requests by the witness for payment of witness expenses and sufficient proof of payment of all amounts due to the non-party witness or deponent, the commission will return the amount of any deposit required under §§148.10(b)(3) and 148.11(d)(3) of this title (relating respectively to Hearings Subpoenas To Compel Attendance and Subpoenas Duces Tecum and Commissions To Compel Attendance For Depositions).

The provisions of this §148.20 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.21. Expenses to be Paid by Party Seeking Judicial Review.

- (a) Upon receiving a copy of a petition filed in district court which seeks judicial review of a final decision in a contested case decided under this chapter, the commission shall prepare a certified copy of the entire record of the proceeding under review, including a transcript of the hearing audiotape, and transmit it to the reviewing court.
- (b) The commission shall assess to the party seeking judicial review, expenses incurred by the commission in preparing this copy, including transcription costs, in accordance with the APA §2001.177 (relating to Costs of Preparing Agency Record). Upon request, the commission shall consider the financial ability of the party to pay the costs or any other factor that is relevant to a just and reasonable assessment of costs. If the party seeking judicial review is an injured employee, the commission shall not charge for duplicating the record.

The provisions of this §148.21 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.22. Failure to Appear or Comply with Order or Decision, Administrative Violation.

A person commits an administrative violation if that person in the status of a party, or otherwise within the jurisdiction of SOAH (for example, a witness), in a contested case hearing or proceeding before SOAH, fails to comply with an order of the ALJ to include any final decisions issued. Failure to comply with such order or decision shall be deemed a violation of a commission rule.

The provisions of this §148.22 adopted to be effective June 9, 2005 30 TexReg 3237.

§148.23. Commission Enforcement of Orders.

Any final order of SOAH is a final order of the commission and may be enforced by the commission in any manner permitted by the Act, the APA, or the rules of the commission. After conclusion of the administrative process, any SOAH order which survives the entry of a final order, the sending of a proposal for decision to the commission, or the dismissal or withdrawal of the case from the SOAH docket, regardless of upon whose motion the dismissal or withdrawal was granted, is an order of the commission and may be enforced by the commission in any manner permitted by the Act, the APA, or the rules of the commission. Examples of enforceable orders include, but are not limited to, orders to reimburse, orders to pay reasonable and necessary medical costs, orders to pay administrative fines, orders to refund, orders assessing attorney fees, orders assessing costs, and orders imposing discovery sanctions.

The provisions of this §148.23 adopted to be effective June 9, 2005, 30 TexReg 3237.

THIS PAGE INTENTIONALLY LEFT BLANK